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Third report of the independent expert on the right to development, Mr. Arjun Sengupta, submitted in accordance with Commission resolution 2000/5

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Introduction

1. The follow-up mechanism consisting of an open-ended Working Group on the Right to Development and an independent expert reporting on progress in the implementation of the right to development that was set up by Economic and Social Council decision 1998/269 came into full operation with the holding of the first session of the Working Group in September 2000. At that session the Working Group considered the independent expert's first two reports on the right to development (E/CN.4/1999/WG.18/2 of 27 July 1999 and E/CN.4/2000/WG.18/CRP.1 of 11 September 2000*). The second session of the Working Group will take place in Geneva from 29 January to 2 February 2001, when it will formulate its recommendations for the consideration of the Commission on Human Rights. This third report of the independent expert aims to assist the Working Group in finalizing its report and recommendations to the Commission; it will also be considered by the Commission at its fifty-seventh session.

2. Since the first two reports of the independent expert are still being considered by the Working Group, and since the time between the two sessions of the Working Group is too short to report on any major developments in the field of the right to development, it is felt that the independent expert need not present a new report on the current developments in this area. Instead, this report focuses on the discussions at the Working Group and aims to clarify many of the issues that were raised at that meeting. Accordingly, in this report the independent expert recapitulates and deals with some of the main issues considered by him in the first two reports, focusing them on the lines along which the Working Group may wish to prepare its recommendations.

I. THE CONTENT OF THE RIGHT TO DEVELOPMENT

3. On the basis of the text of the Declaration on the Right to Development (1986), several subsequent international resolutions and declarations adopted at representative international conferences and the 1993 Vienna Declaration and Programme of Action, it should now be possible to reach a consensus on the definition and the content of the right to development. It will be worthwhile for the Working Group to recommend the adoption of such a consensus.

4. Article 1, paragraph 1, of the Declaration of 1986 states: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." The article spells out three principles: first, there is a human right called the right to development which is inalienable; second, there is a particular process of "economic, social, cultural and political development" in which "all human rights and fundamental freedoms can be fully realized"; and third, the right to development is a human right by virtue of which "every human person and all peoples" are entitled to "participate in, contribute to and enjoy" that particular process of development.

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* The second report of the independent expert was issued in English only as a conference room paper of the Working Group. However, the document was subsequently issued as an official document of the General Assembly (A/55/306) and was edited and translated into all languages. References in the present document will therefore be to that version of the report.

5. It should be noted that a country can develop by many different processes. There may be a sharp increase in gross domestic product (GDP) with the "richer groups", with greater access to financial and human capital, growing increasingly prosperous and the "poorer sections" lagging behind, if not remaining deprived. There may be some industrialization, rapid or not so rapid, without the increased income spreading over all the sectors, with the small-scale and informal sectors getting increasingly marginalized. There may be an impressive growth of the export industries with increased access to global markets, but without integrating the economic hinterland into the process of growth and not breaking the structure of a dual economy. All these may be regarded as development in the conventional sense. However, they will not be regarded as a process of development, as objects of claim, as human rights, so long as they are attended by increased inequalities or disparities and rising concentrations of wealth and economic power, and without any improvement in indicators of social development, education, health, gender balance and environmental protection and, what is most important, if they are associated with any violation of civil and political rights. It is only that process of development "in which all human rights and fundamental freedoms can be fully realized" that can be a universal human right, which is the entitlement of every person.

6. The characteristics of that process of development regarded as a human right have been fairly well spelt out, not only in the Declaration on the Right to Development but also in most other international documents, including the Vienna Declaration and Programme of Action. That the Declaration of 1986 intended to treat the right to development as the right to a process of development is clearly evident in article 2, paragraph 3, which describes such a development process as "the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom." The phrase "constant improvement of the well-being" not only refers to the notion of "progressive realization" which is implied in any idea of achieving the goals of development; it also calls for precise policy formulation that leads to a properly defined process of "improvement" as well as a properly identified concept of "well-being".

7. The independent expert has examined in detail the implications of looking at the right to development as the right to a "particular" process of development, by analysing both the notions of "improvement" and of "well-being". He felt it necessary to do so because otherwise, designing any mechanism or policies for realizing the right to development with any degree of precision would not be possible. (See second report, sections II, III and IV, especially paragraphs 17, 18 and 22-26, and first report, section II. A and B, especially paragraphs 47, 48 and 53-56.) But there are still some misunderstandings about this approach, which the following paragraphs try to clear up.

8. First, the definition of the right to development, as the right to a (particular) process of development, in which "all human rights and fundamental freedoms can be fully realized", is taken from the Declaration itself and does not dilute in any way the notion of the right to development that has emerged from the long tradition of the human rights movement. It refers to the realization of all the rights and freedoms recognized as human rights - civil and political rights and economic and social and cultural rights - in their totality as an integrated whole, as all these rights are interrelated and interdependent. (Article 9, paragraph 1 of the Declaration clearly states: "All the aspects of the right to development set forth in the present Declaration

are indivisible and interdependent and each of them should be considered in the context of the whole.") In other words, the right to development is not just the sum total of all the different rights that can be realized individually or in isolation from other rights. As constituent elements of the right to development, these individual rights have to be realized in a manner that takes into account their interdependence with all other rights, does not detract from the realization of the other rights and does not ignore the requirements of the sustainability of the whole process of realizing all the rights.

9. In paragraph 22 of the second report, the independent expert spells out the idea as follows: "The right to development as the right to a process of development is not just an umbrella right or the sum of a set of rights. It is the right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value. It is possible for individuals to realize several of the rights separately, such as the right to food, the right to education or the right to housing. It is also possible that those rights are realized separately following the human rights approach, that is, with transparency and accountability, in a participatory and non-discriminatory manner, and even with equity and justice. It could even be possible that the right to development is not realized as a process of development where the realization of all the rights are interrelated in accordance with a sustainable process." To substantiate this point clearly in his second report (paras. 23-25) the independent expert reiterated the concept he had elaborated in the first report, of development as improvement of a "vector" of human rights (para. 67 ff). He described the right to development as a vector composed of various elements including the right to food, the right to health, the right to education, the right to housing and other economic, social and cultural rights, as well as all the civil and political rights together with the rates of growth of GDP and other financial, technical and institutional resources that enable any improvement in the well-being of the entire population and the realization of the rights to be sustained.

10. The characteristics of this vector also specify the nature of the right to development and the methods of its realization. First, each element of the vector is a human right just as the vector itself is a human right, since the right to development is an integral part of those rights. This means that they all will have to be implemented in a rights-based manner which is transparent, accountable, participatory and non-discriminatory with equity in decision-making and sharing of the fruits or outcomes of the process. Secondly, all the elements are interdependent, both at any point in time and over a period of time. They are interdependent in the sense that the realization of one right, for example the right to health, depends on the level of realization of other rights, such as the right to food, or to housing, or to liberty and security of the person, or to freedom of information, both at the present time and in the future. Similarly, realization of all these rights in a sustainable manner would depend upon the growth of GDP and other resources, which in turn would depend upon the realization of the rights to health and education, as well as to freedom of information. Thirdly, an improvement in the realization of the right to development or an increase in the value of the vector will be defined as an improvement in all the elements of the vector (i.e. human rights), or at least in one element of the vector while no other element deteriorates. Because all human rights are inviolable and none is superior to another, the improvement of any one right cannot be set off against the deterioration of another. Thus, the requirement for improving the realization of the right to development is the promotion or improvement in the realization of at least some human rights, whether civil, political, economic, social or cultural, while no other deteriorates.

Value added of the right to development as a process

11. The second area where several delegations requested clarification concerned whether there is any "value added" to the already recognized rights by invoking and exercising the right to development. The question would be legitimate if the right to development were defined merely as the sum total of those rights. Looking at the right to development as a process brings out the value added clearly: it is not merely the realization of those rights individually, but the realization of them together in a manner that takes into account their effects on each other, both at a particular time and over a period of time. Similarly, an improvement in the realization of the right to development implies that the realization of some rights has improved while no other right is violated or has deteriorated.

12. For example, the right to adequate food, as stated in article 11 of the International Covenant on Economic, Social and Cultural Rights, has been elaborated by the Committee on Economic, Social and Cultural Rights in General Comment 12 of 12 May 1999, which must be taken fully into account in any rights-based programme for the realization of that right. The general comment refers to three levels of obligations, respecting, protecting and fulfilling, each of which is interrelated with the level of realization of other rights and which must be taken into account when realization of the right to food is considered as an element of the right to development. For example, it may not be possible to respect or protect this right if there is no freedom of information or association. Fulfilling, on the other hand, requires providing people access to adequate food and will depend on the resource base for food, whether for production or for imports. The general comment recognizes this (para. 27), but does not go to the extent of noting that it implies looking at the provision of food as a part of a country's overall development programme, bringing in fiscal, trade and monetary policies and the issues of macroeconomic balance. The situation would be similar with regard to the right to health, or the right to housing, or even the right to education. Fulfilling these rights would imply augmenting the availability of resources and the proper allocation of existing resources. This would mean changes in policy economy-wide, so that the increased realization of any one right is achieved without detracting from the enjoyment of the other rights.

13. There are two obvious implications of looking at the right to development as an integrated process of development of all human rights. First, the realization of all rights, separately or jointly, must be based on comprehensive development programmes using all the resources of output, technology and finance, through national and international policies. The realization of human rights is the goal of the programmes, and the resources and policies affecting technology, finance and institutional arrangements are the instruments for achieving this goal. If a rights-based approach to participatory, accountable and decentralized development turns out to be cost-effective it may be possible to reduce the expenditure of resources in one direction, for example education, and raise it in another, such as health, and thereby register an improvement in the realization of both rights. But if these improvements are to be sustained and extended to cover all rights, the resource base of the country must expand to include not only GDP, but also technology and institutions.

14. That is why we must include the growth of resources, such as GDP and technology, as an integral element in the vector of rights that constitute the right to development. Such is implied in the language of the Covenants and the Declaration, which refer to continuous improvement of

well-being or living conditions. In the human development literature it is sometimes suggested that human development does not necessarily follow from the growth of GDP and other resources. Policies aimed at raising GDP must be complemented by others for raising human development. That does not mean, however, that it is possible to achieve human development only by following the rights-based approach to development and ignoring policies for economic growth. In other words, the value added of the concept of the right to development is not just that the realization of each right must be seen and planned as dependent on all other rights, but also that the growth of resources (including GDP, technology and institutions) must also be planned and implemented as part of the right to development. Like the rights to health, education, etc. the growth dimension of the right to development is both an objective and a means. It is an objective because it results in higher per capita consumption and higher living standards; it is instrumental in that it allows for the fulfilment of other development objectives and human rights.

15. However, to be recognized as an element of the human right to development growth of resources must be realized in the manner in which all human rights are to be realized, that is, following the so-called rights-based approach, ensuring in particular equity or the reduction of disparities. That would imply a change in the structure of production and distribution in the economy which ensures growth with equity and would receive a programme of development and investment that may not depend on reliance on market mechanisms alone, but may require substantial international cooperation. Indeed, once the right to development is seen in the context of a development programme aiming at a sustained, equitable growth of resources, it becomes clear that national action and international cooperation must reinforce each other in order to realize rights in a manner that goes beyond the measures for realizing individual rights.

Monitoring mechanisms

16. Looking at the right to development as an integrated process should also make it possible to substantiate the claim that the realization of civil and political rights would require the fulfilment of economic, social and cultural rights and vice versa. This would imply that any programme for realizing civil and political rights as a part of the right to development must clearly specify how they facilitate the realization of economic, social and cultural rights, such as through freedom of information, association, democratic decision-making, participation and non-discrimination. Similarly, a programme for realizing economic, cultural and social rights must be dependent on the promotion of civil and political rights, both at a point in time and over time. More important, as a result of this interdependence the monitoring mechanisms for the right to development will have to be different from those for monitoring civil and political rights and economic, social and cultural rights. The United Nations treaty bodies monitor the rights contained in the respective instruments individually and separately. A mechanism for monitoring the right to development will have to review the implementation of the various rights both individually and in a composite manner, as a part of the process of development and in the context of economic growth with equity.

17. The independent expert has been asked to examine the possibility of examining the question of whether there is a need for a new international instrument to facilitate the monitoring of the right to development. He has not examined the issue in depth, as there are still many areas of disagreement which have to be resolved before the international community can begin talking

about or negotiating such an instrument. That does not mean, however, that there is no need for a monitoring mechanism for the right to development. Since the right to development has been recognized as a human right distinct from the individual civil and political rights and economic, social and cultural rights, it is indeed necessary to consider a monitoring mechanism that is separate from the treaty bodies.

18. The independent expert believes that such a monitoring mechanism can be established even without a convention, on the basis of the consensus that has been built up around and the analytical provisions that can be introduced into the concept of the right to development. To begin with, the committees under the two International Covenants should examine each of the rights in the light of their interlinkages and should determine whether the exercise of one right is facilitating or detracting from the fulfilment of others. But that will not be enough, because, as we have noted, it would also be necessary to examine their implementation taken together as a composite whole, against the background of a programme of national development promoting growth and technological progress. It will also be important to assess how such national development promotes equity both within a State and between States, through a rights-based approach to international cooperation. It will ultimately be necessary to establish an international committee to review the implementation of the integrated right to development and to make recommendations thereon in terms of the international consensus. The Working Group mechanism which has been established on the right to development can, in the first place, be extended, with the independent expert reporting regularly to it about the current status of implementation of the right to development. In addition, non-governmental organizations and other civil society bodies may submit reports for its consideration. It should also be possible for individual States to submit reports about their grievances or the difficulties faced in implementing the right to development and the working group or the international community may invite the concerned States and international agencies to respond to the review of these reports.

Development as a human right

19. There is now a general consensus that the right to development is a human right. This was spelt out clearly in the Declaration on the Right to Development which, at the time of its adoption, was not supported by all States. Since then there has been a long process of consensus-building, both inside and outside United Nations forums and international conferences. It was at the World Conference on Human Rights in 1993, which was attended by almost all Member States, that there finally emerged a consensus on the right to development as a human right. The Vienna Declaration and Programme of Action reaffirmed the right to development as a "universal and inalienable right and an integral part of fundamental human rights" and also that "the universal nature of these rights and freedoms is beyond question".

20. The implications of treating the right to development as a human right have been fairly well explored in the literature, including Amartya Sen's *Development As Freedom*,[1] the *Human Development Report 2000* and the independent expert's first and second reports, and need not be elaborated upon again. However, it may be worth reiterating the following, from the first report of the independent expert (para. 20): "For our purpose the recognition of the right to development as an inalienable human right is to confer on its implementation a claim on national and international resources and to oblige States and other agencies of society, including

individuals, to implement that right. Human rights are the fundamental basis on which other rights, created by the legal and political systems, are built. The responsibility of States, nationally and internationally, as well as other organs of the civil society to help realize these rights with utmost priority becomes unquestionable. The Vienna Declaration and Programme of Action, in fact, states that categorically. 'Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.' It goes on to state that 'enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations'."

21. Regarding the right to development as a human right implies two things, especially when that right refers to a process of development. First, the realization of each human right and of all of them together has to be carried out in a rights-based manner, as a participatory, accountable and transparent process with equity in decision-making and sharing of the fruits of the process while maintaining respect for civil and political rights. Secondly, the objectives of development should be expressed in terms of claims or entitlements of right-holders which duty-bearers must protect and promote in accordance with international human rights standards of equity and justice. Equity, which is essential to any notion of human rights derived from the idea of equality of all human beings, is clearly associated with fairness or the principles of a just society. In other words, the realization of the human right of development must expand human development following the rights-based approach, thus improving equity and fairness.

22. It should be clear that the identification of the corresponding obligation at the national and the international level is essential to a rights-based approach. The rationale for this has been spelt out in detail in the two reports of the independent expert. As the Declaration on the Right to Development itself points out, the primary responsibility for implementing the right to development belongs to States. The beneficiaries are individuals. The international community has the duty to cooperate to enable States to fulfil their obligation. The Vienna Declaration and Programme of Action also recognizes the obligation of all States, and multilateral institutions to cooperate to achieve the full realization of the right to development. It reaffirms the solemn commitment of all States to fulfil their obligations in accordance with the Charter of the United Nations (paragraph I.1; the reference is to Article 1 of the Charter as well as to Articles 55 and 56). It calls for effective implementation of the right to development through policies at the national level with equitable economic relations and a favourable environment at the international level.

National actions

23. The two previous reports of the independent expert built upon the earlier reports of the various working groups, which dealt with the range of national actions necessary for implementing the right to development. Here we recapitulate those few which were considered at some length at the first session of the Working Group and which are regarded as deserving special emphasis.

24. First, national actions should be applicable to the implementation of each of the constituent rights of the right to development individually, as well as in combination with each

other as a part of a development programme. They should be categorized as measures that prevent violation of any right and measures that promote the improved realization of all rights. According to our vector concept of the right to development, violation of any one right would mean violation of the right to development itself. In the design of any programme for the promotion of a right, it must be ensured that another right will not be adversely affected. Particularly relevant in this regard is the recommendation of the Intergovernmental Group of Experts on the Right to Development regarding States which should be "encouraged to consider legislation and constitutional changes ... which are designed to guarantee that treaty law takes precedence over internal law and that treaty provisions are directly applicable in the internal legal order" (E/CN.4/1998/29, para. 65). Such guarantees would go a long way towards preventing violations of the rights recognized in the Covenants.

25. The role NGOs play nationally in promoting a human rights-based approach to development and preventing violations of human rights has been highlighted in many documents and resolutions of international conferences. In the independent expert's approach to the realization of the right to development the obligation to facilitate the rights-holders' realizing of their claims falls not only on States nationally and internationally, but on international institutions, on the civil society, and on any body in the civil society in a position to help. NGOs are one constituent of civil society that can and has often played a very effective role in the implementation of human rights. Indeed, when the rights are to be realized in a participatory manner with participation of the beneficiaries in the decision-making and benefit-sharing, with accountability and transparency and in a widely decentralized manner, NGOs may have to play an even more crucial role in monitoring the programmes and delivering the services and may often replace the existing bureaucratic channels of administration. They may also have to play an advocacy role as well as engaging in grass-roots mobilization and organizing of beneficiaries to participate in the decision-making. Furthermore, the role of NGOs would not be limited to national-level actions. The concept of international civil society as a third force is increasingly gaining ground and NGOs may be very effective in not only an international advocacy role but also as facilitators of the delivery of international services. However, the issues of funding, the identities and the commitments of NGOs are quite complex. All the functions of NGOs and of international civil society need to be reviewed carefully and the independent expert may take this up in a future report.

26. Article 8 of the Declaration on the Right to Development states that "effective measures should be undertaken to ensure that women have an active role in the development process". Since 1986 the role of women has been analysed and spelt out in great detail at many international conferences and in intergovernmental deliberations and resolutions. Recently, the Beijing Platform for Action (A/CONF.177/20) asserts that all members of society should benefit from "a holistic approach" to all aspects of development: growth, equality between women and men, social justice, conservation and protection of the environment, sustainability, solidarity, participation, peace and respect for human rights" (para. 14). This "holistic approach to development" is identical to what the independent expert has described as the process of development to which every person is entitled as a human right. The empowerment and equality of women are fundamental to that process.

27. In his two previous reports the independent expert has made it clear that the process of the right to development is to be carried out using a human rights approach, which requires that

development be carried out in a manner that fulfils human rights. As noted in his first report, "One of the benefits of using a human rights approach to development is that it focuses attention on those who lag behind others in enjoying their rights, and requires that positive action be taken on their behalf" (para. 31). It is recognized that the respect and fulfilment of the human rights of women lag behind those of men in all areas in the majority of countries in the world and that women "comprise the bulk of the poor".[2] Throughout much of the world women experience discrimination with regard to the right to food, the right to education and the right to health. The Beijing Platform for Action notes that "lack of food and inequitable distribution of food for girls and women in the household, inadequate access to safe water, sanitation facilities and fuel supplies, particularly in rural and poor urban areas, and deficient housing conditions, all overburden women and their families and have a negative effect on their health" (para. 92). To counter this inequality the Beijing Declaration proclaims, "It is essential to design, implement and monitor, with the full participation of women, effective, efficient and mutually reinforcing gender-sensitive policies and programmes, including development policies and programmes, at all levels that will foster the empowerment and advancement of women" (para. 19). Such policies and programmes form part of the human rights approach to development and are integral to achieving the right to development, which would also fulfil the objectives of paragraph 27 of the Beijing Declaration: "Promote people-centred sustainable development, including sustained economic growth through the provision of basic education, life-long education, literacy and training, and primary health care for girls and women." The Beijing Platform for Action recognizes this interdependence and notes how the realization of one right can lead to the strengthening of another related right: "Literacy of women is an important key to improving health, nutrition and education in the family and to empowering women to participate in decision-making in society" (para. 69). The human rights of women are not simply an element of the vector the independent expert identifies as the right to development, but are an integral part of each right comprising that vector and the method of realizing each right.

28. Another question deliberated at the Working Group was the need to concretize the action to be taken at the national level in pursuance of the obligations of States in the context of the actions taken by the international community, i.e. international financial institutions and agencies, donor countries and other Governments as well as multinational corporations. There are two basic requirements for realizing the right to development as an integrated process of realization of the various rights. First, it is necessary to identify appropriate indicators and benchmarks for monitoring the realization of each of the rights and a mechanism for evaluating the interaction among the indicators. Indicators and benchmarks for specific rights will have to represent not only the quantitative advances in providing a particular service to a population but also the qualitative manner in which the service is provided. For example, an indicator for the right to food should not only reflect the access to or the availability of food, but also the way that food is made available with regard to equity, non-discrimination and other human rights. Several attempts have been made at developing such indicators and the independent expert proposes to review these exercises in a future study, so that agreed procedures can be adopted to construct such indicators.

29. The independent expert is very sceptical of attempts to build up an overall indicator for the right to development. This is because to convert a vector comprising a number of distinct elements into a scalar or an index would require a process of averaging or weighting the various elements which would be open to fundamental objections. The independent expert's approach

would make it possible to establish whether there has been an improvement in the realization of the right to development; it would not, however, allow comparisons to be made between the achievements of two or more countries, or even within the same country over time. The only way to do this is to build a consensus through open public discussions about the relative importance of the different levels of achievement.

30. This, however, would not prevent the formulation of a programme for development that takes into account the interlinkages between the objective of realizing the various rights including, as mentioned above, the need to expand resources, GDP, technology and institutions. The difference between a rights-based approach to development programmes and the ones that emphasize growth of GDP, or a balance of payments surplus to meet debt liabilities, or a stabilization programme that minimizes the rate of inflation is that the rights-based approach favours human development which expands the capabilities of the individual, freedom and human rights. What differentiates the programme for realizing the right to development from other programmes is not only the differences in the objectives to be realized, but also the manner in which they are to be realized. This type of development imposes additional constraints on the development process, such as maintaining transparency, accountability, equity and non-discrimination in all the programmes. In addition, the programme must ensure overall development with equity, or transformation of the structure of production, which reduces interregional and interpersonal disparities and inequity.

31. Like all other development programmes, such a programme would be subject to constraints of resources, technology and institutions. The importance of the constraints is not so apparent if one is seeking to achieve individual rights in isolation. But as a part of a country's overall development programme, the right to development is very much a matter of modernization and technological as well as institutional transformation which relaxes the technological and institutional constraints over time. So it is also dependent on increasing resources over time, by making the most efficient use of the existing resources through proper fiscal, monetary, trade and competitive market practices, and by promoting the growth of resources and expanding the opportunities for trade. Achieving the right to development requires the same fiscal and monetary discipline, macroeconomic balance and competitive markets as any other form of prudent economic management. The basic difference is that prudent management in furtherance of achieving the right to development is expected to bring about a more equitable outcome of the economic activities that make possible an improved realization of all the components of that right.

International cooperation

32. Once the process of realizing the right to development is viewed as a method of executing a development programme of a country, the importance of international cooperation becomes apparent. As has been mentioned in both of the independent expert's reports, no State in today's globalizing world can follow any policy independently, that is without considering the effects of its policies on other countries, or without taking into account the impact of the behaviour of other countries on its own policies. The impact of the policies and practices of the developed countries on those of the developing countries, and vice versa, was, moreover,

recognized in the concept of international cooperation in the International Covenants and the Declaration on the Right to Development. Just as these impacts are reciprocal, so too are the obligations of international cooperation.

33. When these rights are to be realized as a part of a country's development programme, as is the right to development, all the constraints of resources, technology and institutions can be seen as dependent upon the extent and nature of international cooperation. The international community, which could supply foreign savings and investments, technology and access to markets as well as institutional support, can facilitate the realization of the rights. The human rights approach to development requires the international community to meet the obligations of such international cooperation.

34. It should be obvious that such international cooperation is not to be confined to the supply of foreign savings and foreign investment, or the transfer of resources. Such transfer of resources is, of course, necessary. The poor countries are short of domestic resources, which need to be supplemented by flows of foreign savings. Any discourse on the right to development cannot therefore avoid reminding the international community of its pledge to reach a target of devoting 0.7 per cent of gross national product as foreign aid, and that only a handful of countries have come anywhere near meeting the target. However, in the context of fulfilling the right to development the following would become a part of the obligations of the international community: international cooperation for supplying technology; providing market access; adjusting the rules of operation of the existing trading and financial institutions and intellectual property protection; and creating new international mechanisms to meet the specific requirements of the developing countries.

35. Such international cooperation would usually have two, not mutually exclusive dimensions. First, cooperation measures should be conceived and executed internationally in a multilateral process in which all developed countries, multilateral agencies and international institutions could participate by providing facilities to which all qualifying developing countries could have access. Secondly, bilateral facilities or country-specific arrangements would deal with problems requiring measures adapted to particular contexts. The independent expert has drawn attention to the following multilateral facilities dealing with the debt problems of developing countries: structural adjustment and concessional financing facilities of international financial institutions, world trade organizations and developed industrial countries' programmes of providing market access, restructuring of the international financial system to solve the many problems of inadequacy and instability of financial flows of developing countries. All of these require intensive review from the point of view of meeting the obligations of international cooperation with States trying to realize the right to development. In a human rights framework such international cooperation should not only be transparent and non-discriminatory but also equitable and participatory, both in the decision-making and in the benefits-sharing. The quid pro quo for the industrial countries and the international institutions of accepting this human rights framework is that their obligation is matched by the obligation of the developing countries to facilitate the realization of the right to development of their people.

36. With regard to bilateral facilities and country-specific arrangements, the independent expert has put forward a programme for operationalizing the right to development in a step-by-step manner which will be examined in greater detail in the following paragraphs. It is

important to emphasize at this point that both the multilateral and bilateral dimensions of international cooperation open up new possibilities for realizing the right to development in a human rights framework. This can radically transform international economic relations, especially between the developed and developing countries, on the basis of equity and partnership. One of the principal motivations of the human rights movement leading up to the formulation of the right to development as a human right was establishing equity and empowerment in international economic transactions between developed and developing countries. Much of the logic of the North-South conflict that was behind the demand for NIEO in the 1970s has now lost its relevance. However, the rationale for equitable treatment and participation in the decision-making and access to the benefits of the process remains as strong today. The human rights approach to the realization of the right to development provides scope for building up a cooperative relationship between the developed and developing countries on the basis of partnership rather than the confrontation of earlier years.

II. OPERATIONALIZING THE RIGHT TO DEVELOPMENT

37. In his two previous reports the independent expert provided a scheme for operationalizing the right to development so that it can be realized in a step-by-step manner, which is consistent with the notion of progressive realization implicit in the concept of the right to development. It is not necessary to recapitulate all the arguments, which can be found in the earlier reports. Essentially, this scheme consists of developing countries' adopting their own programmes to eradicate poverty in a sequential manner within a specific target period as a method of realizing the right to development. To counter a point made by one delegation at the first session of the Working Group it must be mentioned that the programme for eradicating poverty was seen as an illustration of the process of realization of the right to development. It is not the same as the whole programme for realizing the right to development, which goes much beyond eradicating poverty and incorporates the realization of all human rights and fundamental freedoms. Poverty in many senses is the most abject violation of human rights, denying practically all the freedoms to the people affected. The eradication of poverty would therefore be a first step towards the progressive realization of the human right to development.

38. In addition, the independent expert invoked the theory of justice: equity demands that the most vulnerable and least privileged groups be cared for, and equity is the essence of the human rights approach. The programme for poverty eradication, must therefore be formulated following a rights-based approach through measures which are participatory, accountable, transparent, equitable and non-discriminatory. As a part of the programme for the realization of the right to development, such measures for poverty eradication must be a part of the country's development programme.

39. In implementing a rights-based development programme that incorporates measures to eradicate poverty within a specified time period, a developing country must ensure not only a reasonable rate of growth but must make it sustainable, while not allowing any human rights to be violated or a retrogression in the indicators of any of the rights. Such a development programme would highlight the constraints on resources, technology and institutions which would require national and international action to overcome. A properly carried out assessment of national capacities, domestic savings and trade prospects should make it possible to project

the requirements for international cooperation in terms of additional resources, technology transfer, market access for its exports, etc. It would be expected that the international community would meet the obligation of such international cooperation.

40. Such a programme of poverty eradication could also be adapted to realize several other rights. For illustrative purposes the independent expert suggested focusing on rights such as the right to food, the right to primary health care and the right to primary education more as convenient examples and not because other rights are not important. They are basic rights connected with the right to life and most countries already have experience dealing with programmes that provide food, primary health care and primary education, with the full support of international agencies such as the Food and Agriculture Organization, the World Health Organization and the United Nations Children's Fund, as well as the World Bank and bilateral donors. That would make it relatively easier to cope with such programmes while treating them as part of an overall programme for realizing the right to development. But there is no reason why States cannot choose any other rights to which they attach higher priority. The only point the independent expert wished to make was that only a few rights should be selected at the initial stage, as otherwise the programmes will become overloaded and have a greater chance of failing.

41. If the selected rights are implemented through programmes complementary to a poverty eradication programme, they can be justified by another argument. Poverty has an income dimension, when the poor are defined in terms of living below a particular level of income or consumption, such as $1 a day, as in the calculations of the World Bank. But poverty also has a capability dimension which prevents people from having the capacity to earn more and rise above the poverty line in a sustainable manner. The provision of food, primary health care and primary education in a rights-based manner, with equity and non-discrimination, is the most important method of alleviating that capability-poverty, which would make any programme for the eradication of income-poverty sustainable.

42. If a State chooses to focus on realizing the three rights suggested above as part of its development programme, there will be implications for the required resources and international cooperation. In fact the additional requirements may not be very large if any one of them was considered separately without taking into account its indirect effects. But when they are looked at as a part of a development programme, with a clear provision that no other indicator of services associated with the rights will be allowed to be reduced, the requirements in terms of additional resources or other kinds of cooperation may become more apparent. The resources for health, education and food should be allocated without sacrificing any other human right or any other objective that is part of a development programme; they should therefore be additional to the resources meant for realizing the development programme.

43. The nature and the extent of the integrated cooperation required to facilitate the developing countries' realization of poverty-eradication programmes and the fulfilment of the rights to food, to primary health care and primary education will be different from country to country, depending on their stage of development. The independent expert proposed that such country-specific international cooperation could be conducted through development compacts based on reciprocal obligations. The characteristics of the development compacts have been fully spelt out in the two reports. It may suffice to quote the following four paragraphs of the second report:

"69. The reciprocal obligations that will have to be spelled out in the development compacts must be worked out carefully. The developing countries must accept the primary responsibility of implementing programmes for realizing the right to development covered by the compact, with all the necessary policies and public actions. Several studies of the World Bank and IMF showed that the usual process of imposing conditionality in financial programmes did not work in most cases because they appeared to be imposed from outside and therefore not owned by the developing countries. It is imperative that whatever conditionality or obligations that the developing countries have to take up should be seen by them as being in their own interest and should be monitored mostly by them. In a rights-based approach, this is particularly important to ensure equality of treatment.

"70. In a development compact, the developing countries will have to take up obligations regarding fulfilling and protecting human rights. The most equitable manner of monitoring the fulfilment of those obligations would be through the establishment in each country of a national human rights commission, consisting of eminent personalities from the country itself. For that purpose, all countries wishing to implement the right to development through development compacts will have to set up such national commissions, which will investigate and adjudicate on violations of human rights. That is initially the only way to ensure against such violations. No country in the world could claim that there are absolutely no violations of human rights in its territory. All that can be ensured is that there is an adequate mechanism in the legal systems to redress such violations. If a developing country sets up a national human rights commission in accordance with international norms and it can function independently without any hindrance or obstacle and appropriate legislation is framed, then that should be sufficient guarantee that the country will carry out its human rights obligation according to the development compact.

"71. The obligation of the international community should also be set out in the context of the development compact. If a developing country carries out its obligations, the donor countries and the international agencies must ensure that all discriminatory policies and obstacles to access for trade and finance are removed and the additional cost of implementing those rights is properly shared. The exact share may be decided on a case-by-case basis or in accordance with an international understanding of, say, half-and-half share of the additional cost between representatives of the international community and the country concerned.

"72. The details of the compacts and the rights-based approach to the implementation of such a programme may be worked out without much difficulty by experts from the countries concerned and the international agencies that were involved in the countries and experienced in the appropriate fields. What is necessary is political will, determination on the part of all the countries that have accepted the right to development as a human right to implement the right to development in a time-bound manner through obligations of national action and international cooperation."

III. RECOMMENDATIONS ON INTERNATIONAL COOPERATION

44. In making recommendations on international cooperation the Working Group may wish to consider the following paragraphs which are based on the concluding paragraphs of the first report (paras. 84 and 86)

45. The idea of a compact is only one model of international cooperation; the practical feasibility of that idea, as well as other alternatives, will have to be examined in further detail. The approaches to development cooperation brought by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development and the bilateral donor agencies are very consistent with the approach of the independent expert. The 1996 DAC study *Shaping the 21st Century: The Contribution of Development Cooperation*; the 1997 SIDA study, *Development Cooperation in the 21st Century*; the 1997 White Paper by the United Kingdom Secretary of State for International Development, *Eliminating World Poverty: A Challenge for the 21st Century*; and the World Bank policy research report, *Assessing Aid*, all spelt out the essential ingredients for the approach of a development compact as proposed by the independent expert. To this must be added the *World Development Report 2000* by the World Bank and the poverty reduction strategy papers prepared by the IMF and the World Bank in the context of the HIPC initiative. The independent expert may be asked to explore the approach to development compacts in consultation with these agencies.

46. Once this approach is properly developed, it may be useful to think of establishing a forum under the auspices of the Commission on Human Rights. A forum to discuss the problems encountered in the process of realizing the right to development, and possible measures to overcome them, could be attended by a group of representative Governments, international financial institutions, aid agencies or DAC and concerned developing countries. Since the Declaration on the Right to Development is not an international treaty, such a forum would not have the status of a treaty body and its recommendations would not have a legal basis. It would rather be a setting in which the most relevant actors, deciding by consensus, could make recommendations with a view to mobilizing resources for the implementation of the right to development. It would draw on the common country assessments and integrate into the UNDAF process the explicit concerns of the Declaration and the opportunity generated by the commitment that States and development agencies have made to fulfil their respective international obligations.

Notes

[1] Amartya K. Sen, *Development as Freedom*. Oxford University Press, 1999.

[2] *Eliminating World Poverty, A Challenge for the 21st Century*, White Paper, United Kingdom Secretary of State for International Development, 1997, 15 pp.

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Provisional agenda

1. Opening of the session.

2. Adoption of the agenda, timetable and programme of work.

3. Consideration of the report of the High Commissioner for Human Rights.

4. Consideration of the report of the independent expert.

5. Consideration of reports and other information submitted by States, United Nations specialized agencies, funds and programmes, international financial institutions, non-governmental organizations and others.

6. Adoption of recommendations.

7. Adoption of the report.

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